



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,706	03/09/2004	Johanna Fraki	442-010769-US (D01)	2938
2512 PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824	7590 02/03/2009			
EXAMINER				
ARAQUE JR, GERARDO				
ART UNIT		PAPER NUMBER		
3689				
MAIL DATE		DELIVERY MODE		
02/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/796,706

**Applicant(s)**

FRAKI ET AL.

**Examiner**

Gerardo Araque Jr.

**Art Unit**

3689

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 33-42 and 44-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-42 and 44-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 33 – 42, 50 – 56, and 58** are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over **Treyz (US Patent 6,587,835)** in view of **Filler et al. (WO 00/11827)**.
3. **Claims 33 – 42, 50 – 56, and 58** are rejected under 35 U.S.C. 102(e) as being anticipated by **Treyz (US Patent 6,587,835)**.
4. In regards to **claims 35, 36, 40, and 55**, **Treyz** discloses a method comprising:  
**data (inherently included);**  
**a memory configured to store data (Figure 4 at least #74);**  
**a circuitry configured to exchanging data associated with a user of the first**  
**mobile phone (Fig. 4 #96, 104);**  
**a detector configured to detect whether a second mobile phone is available for**  
**trading data (Col. 45 Lines 21 - 30); and**

a short-range wireless communication transceiver configured to directly communicating with the second mobile phone for trading data (**Fig. 4 # 94; see also Col. 13 Lines 16 – 37**);

wherein the detector is further arranged to detect the availability of a data **(inherently included in that a cellular phone is configured to be in communication with the nearest cellular phone tower and to also allow incoming calls)**.

Regarding the limitation that the data is pertaining to a digital collectible card, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

5. In regards to **claim 33, 34, and 51**, **Treyz** discloses wherein the short-range wireless communication transceiver comprises a Bluetooth transceiver (**Col. 13 Lines 16 – 37**).

6. In regards to **claims 37 and 52**, **Treyz** discloses further comprising:

a cellular mobile communication network **(inherently includes see also at least Fig. 1)**; and

a means for determining whether the first and second mobile phones are in the same cell of the cellular mobile communication network **(see at least Col. Lines 21 – 30 wherein monitoring if a second phone is in the vicinity would require that the second phone is in the same cell)**.

7. In regards to **claims 38, 56, and 58**, **Treyz** discloses further arranged to transfer confirmation and registration messages to a server via a cellular mobile communication network (**Further, applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user.**).
8. In regards to **claim 39**, **Treyz** discloses further arranged to determine whether the second mobile phone is in the vicinity of the first mobile phone (**Col. 45 Lines 21 – 30**).
9. In regards to **claim 41**, **Treyz** discloses further arranged to determine whether another piece of data is available (**see at least Col. 10 Lines 9 – 42 wherein the cellular phone is configured to receive data from various locations and wherein it is also configured to search for other cellular towers when it has left the current cell**).
10. In regards to **claim 42**, **Treyz** discloses wherein the first and second mobile phones are operable to exchange data (**see at least Col. 45 Lines 21 – 30 wherein monitoring would require data to be exchanged between the 2 mobile phones**).
11. In regards to **claims 50 and 62**, **Treyz** discloses a system for trading data comprising:

data (inherently included);

a first mobile phone configured to store data, wherein the system is configured to detect the data and wherein the data is configured to be associated with a user of the first mobile phone; **(Fig. 2 # 12, Applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user);**

a second mobile phone having a second user, wherein the second mobile phone is capable for associating the second user with the data, the second mobile phone configured to determine if the first mobile phone is in the vicinity of the second mobile phone **(Fig. 2 # 12, wherein multiple users can use the system, see also Col. 45 Lines 21 – 30 wherein a second user who would also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [See also provided example in citation]);**

a network entity arranged to associate data with the first mobile communication phone **(inherently included);**

wherein the system is configured to detect whether the second mobile phone is available for trading data, and wherein the first and second mobile phones both comprise a short-range wireless communication transceiver configured to directly

communicate between the first and second mobile phones for trading data, and wherein the first mobile phone is configured to detect whether the second mobile phone is available for trading the data (Col. 13 Lines 16 – 37 wherein multiple users can use the system; Col. 45 Lines 21 – 30 wherein a second user who can also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [see also provided example in citation]); and

where the short-range wireless communication transceiver of the first mobile communication phone being arranged to detect a request for availability of data from the second mobile communication phone (Col. 45 Lines 21 – 30 wherein a second user who can also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [See also provided example in citation]).

Regarding the limitation that the data is pertaining to a digital collectible card, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

12. In regards to **claim 53**, **Treyz** discloses further comprising:

a transceiver for cellular mobile wireless communication over a cellular mobile communication network (**Fig. 4 # 94**);

an input user interface to communicate to the cellular mobile communication network (**Fig. 4 #84, 90**);

a memory to store data (**Fig. 4 # 74, 76**);

an output user interface to display data (**Fig. 4 #82**);

a processor configured to transmit identity information over the cellular mobile communication network and a request to receive data (**Fig. 4 # 68, 96, 104**).

wherein the data is adapted to be associated with a user based on the identity information transmitted (**Further, applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user**).

13. In regards to **claim 54**, **Treyz** discloses wherein the user identity information includes a password (**Page 18 Lines 41 – 58**).

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. **Claims 33 – 42, 50 – 56, and 58** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Treyz (US Patent 6,587,835)** in view of **Filler et al. (WO 00/11827)**.

16. In regards to **claims 35, 36, 40, and 55**, **Treyz** discloses a method comprising:  
a memory configured to store the data (**Figure 4 at least #74**);



circuitry for exchanging data associated with a user of the first mobile phone  
**(Fig. 4 #96, 104);**

a detector arranged to detect whether a second mobile phone is available for trading data **(Col. 45 Lines 21 - 30);** and

a short-range wireless communication transceiver for directly communicating with the second mobile phone for trading data **(Fig. 4 # 94; see also Col. 13 Lines 16 – 37);**

wherein the detector is further arranged to detect the availability of a data **(inherently included in that a cellular phone is configured to be in communication with the nearest cellular phone tower and to also allow incoming calls).**

However, **Treyz** fails to explicitly disclose where the data being transferred is a digital collectible card.

**Filler** discloses a communication network where a user of a communication device is associated with a digital collectible card and is able to trade the digital tradable card with another user of a second communication device **(See at least Page 2 Lines 17 – 29, Page 27 – 18 Lines 13 – 2; Fig. 19).**

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Treyz** to allow a user to trade digital collectible cards with other users, as taught by **Filler**, in order provide the ability to more easily trade and expand the number of users that are capable of trading digital cards.

17. In regards to **claim 33, 34, and 51, the combination of Treyz and Filler** discloses wherein the short-range wireless communication transceiver comprises a Bluetooth transceiver **(Treyz Col. 13 Lines 16 – 37).**

18. In regards to **claims 37 and 52, the combination of Treyz and Filler** discloses further comprising:

a cellular mobile communication network (**Treyz obviously included see also at least Fig. 1**); and

a means for determining whether the first and second mobile phones are in the same cell of the cellular mobile communication network (**Treyze see at least Col. Lines 21 – 30 wherein monitoring if a second phone is in the vicinity would require that the second phone is in the same cell**).

19. In regards to **claims 38, 56, and 58, the combination of Treyz and Filler** discloses further arranged to transfer confirmation and registration messages to a server via a cellular mobile communication network (**Filler Figure 3; Applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user.**).

20. In regards to **claim 39, the combination of Treyz and Filler** discloses further arranged to determine whether the second mobile phone is in the vicinity of the first mobile phone (**Treyz Col. 45 Lines 21 – 30**).

21. In regards to **claim 41, the combination of Treyz and Filler** discloses further arranged to determine whether another piece of data (digital collectible card) is available (**Filler Pages 27 – 28 Lines 13 – 2**).

22. In regards to **claim 42, the combination of Treyz and Filler** discloses wherein the first and second mobile phones are operable to exchange messages (**Treyz see at least Col. 45 Lines 21 – 30 wherein monitoring would require data to be exchanged between the 2 mobile phones; Filler Figure 19 #1060, 1070, 1080; Moreover, the Examiner also asserts that the concept of text messaging/instant messaging is an old and well known function of cell phones [for more information see supplied references “Keeping in touch It’s not enough to have instante messaging on your phone PCs these days. Get ready for instant messages on your cell phone. AT&T Wireless offers it, and Sprint PCS will soon.”]**).

23. In regards to **claims 50 and 62, Treyz** discloses a system for trading data comprising:

a first mobile phone having a user associated with data, wherein the system is configured to detect the data, and wherein the data is configured to be associated with a user of the first mobile phone (**Fig. 2 # 12, Applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone’s SIM’s number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or**

**AT&T) and in the event that it is not a roaming signal would be displayed to the user);**

a second mobile phone having a second user, the second mobile terminal being capable for associating the second user with the data, the second mobile phone operable to determine if the first mobile phone is in the vicinity of the second mobile phone **(Fig. 2 # 12, wherein multiple users can use the system, see also Col. 45 Lines 21 – 30 wherein a second user who would also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [See also provided example in citation]);**

a network entity arranged to associate data with the first mobile communication phone **(obviously included);**

wherein the system is configured to detect whether the second mobile phone is available for trading data, and wherein the first and second mobile phones both comprise a short-range wireless communication transceiver for directly communicating between the first and second mobile phones for trading data **(Col. 13 Lines 16 – 37 wherein multiple users can use the system; Col. 45 Lines 21 – 30 wherein a second user who can also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [see also provided example in citation]); and**

where the short-range wireless communication transceiver of the first mobile communication phone being arranged to detect a request for availability of data from the second mobile communication phone **(Col. 45 Lines 21 – 30 wherein a second user**

**who can also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [See also provided example in citation]].**

However, **Treyz** fails to explicitly disclose where the data being transferred is a digital collectible card.

**Filler** discloses a communication network where a user of a communication device is associated with a digital collectible card and is able to trade the digital tradable card with another user of a second communication device (**See at least Page 2 Lines 17 – 29, Page 27 – 18 Lines 13 – 2; Fig. 19**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Treyz** to allow a user to trade digital collectible cards with other users, as taught by **Filler**, in order provide the ability to more easily trade and expand the number of users that are capable of trading digital cards.

24. In regards to **claim 53, the combination of Treyz and Filler** discloses further comprising:

a transceiver for cellular mobile wireless communication over a cellular mobile communication network (**Fig. 4 # 94**);

an input user interface to communicate to the cellular mobile communication network (**Fig. 4 #84, 90**);

a memory to store data (digital collectible card) (**Fig. 4 # 74, 76**);

an output user interface to display data (digital collectible card) (**Fig. 4 #82**);

a processor configured to transmit identity information over the cellular mobile communication network and a request to receive data (digital collectible card) (**Fig. 4 # 68, 96, 104**).

wherein the data is adapted to be associated with a user based on the identity information transmitted (**Further, applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user**).

25. In regards to **claim 54**, the combination of **Treyz and Filler** discloses wherein the user identity information includes a password (**Treyz Page 18 Lines 41 – 58; Filler Page 15 Lines 31 – 33**).

26. **Claims 44 – 49, 57, and 59 – 61** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Filler et al. (WO 00/11827)** in view of **Yu et al. (US Patent 6,684,087)** and in further view of **Treyz (US Patent 6,587,835)**.

27. In regards to **claims 44, 45, 46, 47, 57, 59, and 61**, **Filler** discloses a method comprising:

storing data at the first mobile phone (inherently included in mobile phones);

associating the digital collectible card data file with the first mobile communication phone is performed at a network entity (**Page 2 Lines 17 – 29**)

trading a digital collectable card associated with a user of a first device including  
**(Page 27 Lines 13 – 16; Fig. 19):**

detecting whether a second device is available for trading a digital collectable card, including detecting the availability of a particular digital card  
**(Page 27 – 28 Lines 13 – 2 wherein agreeing to terms of the trade and swapping cards would require the system to determine if the second device is available a digital collectable card and the act of swapping would only occur if a particular card has been detected. This would further result in detecting whether the second device has a digital collectable card trading capability because if it doesn't then the swap would not occur.); and**

**Filler** is discussed above, but fails to disclose:

the communication network to be a cellular mobile communication network and the computer is to be a cellular mobile phone;

communicating within an operational range of short-range wireless communication directly between the first and second phones for trading the particular digital collectable card; and

exchanging a short-range wireless communication between the first and second mobile phones

**Yu** discloses a computer being a mobile cellular phone to enter a cellular mobile communication network and use the Internet to download digital collectible trading cards as an alternative to trading data over wired connections. Further still, it is asserted that a cell phone is a short-range wireless communication device in that they can only

function if it is within the range of a cellular phone tower (**see provided Google Definition of "Cell"**). Moreover, the concept of exchanging communication between the first and second mobile phone, whether through text or voice, is a feature that is already included in mobile phones since those are the primary functions of the device.

Therefore, as taught by **Yu**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a cellular mobile phone in a cellular mobile communication network to enter the Internet, as an alternative to wired communication, and download digital collectible trading cards. Further, applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone.

However, **the combination of Filler and Yu**, as modified above, fails explicitly disclose:

detecting whether a first mobile phone is in the vicinity of a second mobile phone;  
and

detecting whether the first mobile phone is in the vicinity of the second mobile phone comprises determining whether the second mobile phones are in the same cell of a cellular mobile communication network is old and well known.

**Treyz** teaches determining the vicinity of a second user based on location information of a mobile phone of a user and of a mobile phone of a second user to find the proximity of the second user with respect to the user (**Col. 45 Lines 21 – 30**). Further still, detecting whether the first mobile phone is in the vicinity of the second



mobile phone comprises determining whether the second mobile phones are in the same cell of a cellular mobile communication network is old and well known (**see provided Newton Telecom Dictionary definition for Cell and CMTS**).

Therefore, as taught by **Treyz**, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to determine the vicinity of a second user based on the location information of the mobile phone of the user and of the mobile phone of the second user to find the proximity of the second user with respect to the user.

28. In regards to **claims 48 and 60**, **Filler** discloses further comprising a means for transferring confirmation and registration messages to a server administering the digital collectable card via a mobile communications network (**Figure 3**).

29. In regard to **claims 42 and 49**, **Filler** discloses wherein the first and second mobile terminals are operable to exchange messages proposing a meeting to trade the digital collectable card (**Figure 19 #1060, 1070, 1080**; Moreover, the Examiner also asserts that the concept of text messaging/instant messaging is an old and well known function of cell phones [for more information see supplied references "Keeping in touch It's not enough to have instante messaging on your phone PCs these days. Get ready for instant messages on your cell phone. AT&T Wireless offers it, and Sprint PCS will soon."]).

30. In regards to **claim 54**, **Filler** discloses entering a password at the mobile terminal (**Page 15 Lines 31 – 33**).

***Response to Arguments***

Applicant's arguments filed **10/27/2008** have been fully considered but they are not persuasive.

31. **Rejection under 35 USC 101**

32. Rejection under 35 USC 101 has been withdrawn due to amendments.

**Rejection under 35 USC 112, second paragraph**

33. Rejection under 35 USC 112, second paragraph, has been withdrawn due to amendments.

**Rejection under 35 USC 102**

34. In regards to **points 4.1 – 5.5** the Examiner asserts that the applicant's are directed towards non-functional descriptive subject matter and intended use.

In response to applicant's argument that the data being transferred between the two mobile phones is data containing digital collectible cards, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Further still, although the data being transferred is directed to be digital collectible cards the Examiner asserts this to be non-functional descriptive subject matter. That is to say, the type of data, i.e. digital collectible cards, does not affect how the mobile phones work or transfer data. The type of data adds little, if anything, to the claim's

structure, and, thus, does not serve as a limitation on the claims to distinguish over the prior art. As claimed, the mobile phone will still work in the same manner.

The applicant argues that, "a mobile phone comprising a digital collectible card is in fact a structural different between the present claims and the prior art "(see point 4.2). If so, how? Specifically, how does data add any structure to an apparatus? In other words, data has absolutely no structure to it. Whether the mobile phone is transferring a conversation to another phone, or transferring text messages, or is transferring a digital collectible card the mobile phone is only transferring data.

Therefore, the Examiner once again asserts that the fact that the applicant is claiming a mobile phone to transfer a digital collectible card it is considered to be non-functional descriptive subject matter and is to be considered the intended use of the mobile phone. Moreover, the Examiner's substitution of the term "data" for "digital collectible card" is correct and will be maintained.

35. Applicant further argues that **Treyz** fails to disclose detecting whether a phone is available for trading data. However, the Examiner asserts that such a function is inherently included within mobile phones. As pointed out and admitted by the applicant, **Treyz** detects the presence of another device. Consequently, the only way for a mobile phone to detect the presence of another device data must be exchanged between the mobile phones in order to determine their presence.

36. Applicant further argues the **Treyz** does not disclose a transceiver for directly communicating with the second phone for trading data. Specifically, the applicant argues that **Treyz** does not disclose a short-range wireless communication transceiver

configured to directly communicate with a second mobile phone to trade data.

However, the Examiner asserts that **Treyz** discloses Bluetooth and IR connections, which are short-range communication methods for the explicit purpose of transmitting data over a short-range.

37. The applicant further argues that, "logging into a cellular network is remarkably different from logging into a wire communication network." As discussed above, **Treyz** discloses the use of a mobile phone, which uses a cellular network. With that said, the Examiner further argues that it is also inherent within a mobile phone to belong in a network in order for it to work properly, which requires the transfer of confirmation and registration messages to a server since phones must be registered in some form or fashion with a cellular tower of a cellular mobile provider.

38. In the end the Examiner asserts that all of the applicant's arguments are directed towards the fact that **Treyz** does not disclose that the data is digital collectable card information. However, as discussed above, the Examiner asserts this to be just the intended use of the mobile phone and that it is non-functional descriptive subject matter.

#### **Rejection under 35 USC 103**

39. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Specifically, the Examiner asserts that the applicant argues that **Treyz** fails to disclose digital collectable cards, and that **Filler** fails to disclose mobile phones. However, the Examiner points to the applicant that a rejection under 35 USC 103 was provided, wherein the references must be considered in combination. Consequently, the Examiner asserts that the **combination of Treyz and Filler** discloses a mobile phone(s) for trading digital collectable cards.

40. The applicant further argues that **Treyz** teaches away from the use of a cellular phone because a cell phone does not have a large screen or superior computing power. First, the Examiner asserts that neither of these points are reasons for not using a cellular phone for trading data, wherein the data is digital collectable cards. It is asserted that trading a simple piece of information, i.e. digital collectable cards, does not require the use of a large screen or "superior computing power." One of ordinary skill in the art would have recognized that a mobile phone is more than capable to trade a digital collectable card.

41. The applicant then argues that **Yu** fails to disclose the limitations found within claims 44 - 49, 57, and 59 - 61. However, as was discussed above, the applicant is again arguing the references individually. As a result, the Examiner points to the arguments provided above regarding arguing references separately. Moreover, the Examiner also notes that **Yu** fails to disclose a cellular phone being capable of connecting to the Internet. For this limitation, the Examiner points to at least **Col. 1 Lines 38 - 44 and Col. 2 Lines 6 - 10**, wherein **Yu** discloses that it is old and well known for mobile devices, such as mobile phones, to connect to the Internet.

Furthermore, the applicant argues that **Yu** teaches away from using cell phones for the same reasons that were discussed by **Treyz**. However, the Examiner again asserts that trading a simple piece of information, i.e. digital collectable cards, does not require the use of a large screen or "superior computing power." One of ordinary skill in the art would have recognized that a mobile phone is more than capable to trade a digital collectable card.

42. In the end the Examiner asserts that the applicant's arguments regarding the rejection under 35 USC 103 are directed towards arguing the references separately and the fact that mobile phones do not have "superior computing power" and small screens. However, as discussed above, it is improper to argue the references separately for a rejection under 35 USC 103 and that trading a simple piece of information, i.e. digital collectable cards, does not require the use of a large screen or "superior computing power." One of ordinary skill in the art would have recognized that a mobile phone is more than capable to trade a digital collectable card. Moreover, the Examiner also asserts that one of ordinary skill in the art would have recognized that **Treyz** fully discloses the equivalent network and system as claimed by the applicant and that **Filler** discloses that it is old and well known to trade digital collectable cards between two computing devices, wherein one of ordinary skill in the art would have found it obvious that a cellular phone is a computing device. Regarding **Yu** the Examiner asserts that one of ordinary skill in the art would have found it obvious based on **Yu's** teachings the mobile devices such as cell phones can connect to the Internet.

In other words, the above claims recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. In addition, neither the applicant's Specification nor the applicant's arguments present any evidence that modifying the selected elements of **Treyz** with the selected elements of **Filler**, and, where appropriate, with the selected elements of **Yu** was uniquely challenging or difficult for one of ordinary skill in the art. Under those circumstances, the Examiner did not err in holding that it would have been obvious to one having ordinary skill in the art at the time of the invention was made to modify the **combination of Treyz, Filler, and Yu** to create a mobile communication network wherein mobile phones can trade digital collectable cards and use the Internet. Because this is a case where the improvements are no more than the predictable use of prior art elements according to their established functions, no further analysis is required by the Examiner. KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

#### Other arguments

43. The applicant argues that neither **Treyz** or the **combination of Treyz and Filler, and where appropriate Yu** disclose, "...further arranged to determine whether the first and second mobile phone are in the same cell of a cellular mobile communication network." However, the Examiner asserts that the applicant's interpretation is incorrect because according to the applicant's specification there is no actual detection of the first mobile phone detecting whether the second phone is in the same cell. Specifically, ¶ 76 of the applicant's specification, it is disclosed that, "When mobile terminals 10 and 11

are in the vicinity of each other, for example, they are in the same cell of mobile network 12, or they are otherwise in the proximity of each other and the communication network (12, 13) is able to tract or detect that, server 14 sends messages to both mobile terminals 10 and 11 to indicate this.” In other words, the Examiner asserts that the applicant has only shown support for mobile devices to detect whether they are within communication range within one another, and not that the mobile phones have the functionality of specifically determining whether they are within the same cell. In other words, the applicant has only provided an example of a specific communication range. As discussed above, **Treyz** discloses that the mobile communication devices are capable of determining when they are within vicinity of each other and wherein it is inherently included that those vicinities can include being in the same room for Bluetooth or IR communication or being in the same cell of each other.

### ***Conclusion***

44. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/796,706  
Art Unit: 3689

Page 25

/Tan Dean D. Nguyen/  
Primary Examiner, Art Unit 3689  
February 1, 2009